

OPINION
48-34

December 8, 1948 (OPINION)

COUNTY COURT

RE: Jurisdiction Over Insane Persons

Your letter of December 3, relative to the petition for release of an inmate of the Federal hospital at St. Cloud, has been received and sent to my desk.

Section III of the Constitution prescribes the jurisdiction of county courts and does not seem to give the county court any jurisdiction whatever over insane persons. It would seem, therefore, that such powers as are given the county judge as a member of the insanity board are ex officio powers and not powers of the court. It appears that in every instance the statute speaks of "the county judge" and not of the county court. Of course the legislature could hardly give the county court, as such, jurisdiction not conferred by the Constitution. See the case of State ex rel. Sathre v. Roberts, 67 N.D. 92, 269 N.W. 913, 108 A.L.R. 37.

Section 25-0324 of the Revised Code of 1943 confers authority over persons confined in the State Hospital. This section does not seem to have been amended. I would hesitate, therefore, to believe that the present law gives the insanity board or the county judge, as chairman of the board, extra territorial powers. Supposing you sent a commission to St. Cloud and the members were denied admission to the patient, what remedy would you or the commission have? Clearly, the amendment to section 25-0333 authorizes the committing of an insane person eligible for treatment in a federal hospital to such hospital, but it can hardly, in my opinion, confer extra territorial authority over such person, even though the statute attempts so to do. It is my judgment that the proper remedy is by petition for writ of habeas corpus brought in the county in which the hospital is located in which the patient is confined.

P. O. SATHRE

Attorney General